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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

,
Defendant.

NO. CR MJP

COURT'S PRELIMINARY
INSTRUCTIONS TO THE JURY

Dated:

Marsha J. Pechman
United States District Judge

INSTRUCTION NO. ____

Ladies and gentlemen, you are the jury in this case. It is my duty to instruct you on the law. These instructions are preliminary instructions to help you understand the principles that apply to criminal trials and to help you understand the evidence as you listen to it. At the end of the presentation of evidence, I will collect these instructions and provide you with the final set of instructions which will govern your deliberations. You will be allowed to keep this set throughout the trial to refer to. This set of instructions is not to be taken home and must remain in the jury room when you leave in the evenings. Remember that it is the final set of instructions which will govern your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the Court may say or do what verdict you should return – that is a matter entirely up to you.

INSTRUCTION NO. ____

The trial proceeds in several phases. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, the defendant may present evidence and counsel for the government may cross-examine.

After the evidence has been presented, I will give you a final set of instructions on the law that applies to this case and the attorneys will then make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

INSTRUCTION NO. ____

This is a criminal case brought by the United States government. The government has charged Defendant [*insert name*] with the following:

[*list charges here*]

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until proved guilty beyond a reasonable doubt. The government has the burden of proving every element of the charge beyond a reasonable doubt. A defendant has the right to remain silent and never has to prove innocence or present any evidence.

INSTRUCTION NO. ____

The evidence from which you are to decide what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which all the lawyers agree or stipulate. A stipulation is an agreement between the parties that certain facts are true.

INSTRUCTION NO. ____

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers will say in their opening statements, in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.
3. Anything you see or hear when the court is not in session is not evidence. You are to decide the case solely on the evidence received at trial.

INSTRUCTION NO. ____

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

INSTRUCTION NO. ____

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence which I told you to disregard.

INSTRUCTION NO. ____

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

INSTRUCTION NO. ____

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO. ____

If you wish, you may take notes to help you remember what witnesses said. Each of you will be given a notebook with these instructions and paper to take notes on. Please place your name on the front of the notebook. No one will look at your notes and after your deliberations are complete they will be destroyed. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you so that you do not hear other answers by witnesses. When you leave, your notes should be left in the jury room in the notebook with your name on it.

Do not take notes directly on this set of instructions because the Court will collect this set of instructions before closing arguments when the Court re-instructs you and gives you a final set of instructions.

Whether or not you take notes, you should rely on your own memory. Notes are only to assist your memory. You should not be overly influenced by the notes.

INSTRUCTION NO. ____

Although the defendants are being tried together, you must give separate consideration to each defendant. In doing so, you must determine which evidence in the case applies to each defendant, disregarding any evidence admitted solely against some other defendant. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant.

INSTRUCTION NO. ____

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All of the instructions apply to each defendant and to each count, unless a specific instruction states that it applies only to a specific defendant or defendants, or to a specific count or counts.

INSTRUCTION NO. ____

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

If a defendant in a criminal case does testify, you should treat his testimony just as you would the testimony of any other witness. The defendant is presumed innocent until you the jury find that he is guilty beyond a reasonable doubt.

INSTRUCTION NO. ____

You are here only to determine whether the defendant is guilty or not guilty of the charges. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

INSTRUCTION NO. ____

From time to time during the trial, it may become necessary for me to take up legal matters with the attorneys privately, either by having a conference at the bench or, when necessary, by calling a recess.

We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

INSTRUCTION NO. ____

You may be asked to listen to a tape recording that has been received in evidence. Please listen to it very carefully. Each of you will be given a transcript of the recording to help you identify speakers and as a guide to help you listen to the tape. However, bear in mind that the tape recording is the evidence, not the transcript. If you hear something different from what appears in the transcript, what you heard is controlling. Listen carefully; the transcript will not be available during your deliberations.

INSTRUCTION NO. ____

Certain charts and summaries may be received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves

INSTRUCTION NO. ____

A language other than English will be used for some evidence during this trial. When a party or witness does not use English as their first or primary language, the Court provides an interpreter. When a witness testifies in another language, the witness will do so through an official court interpreter. When recorded evidence is presented in another language, there will be an official court translation of the recording. The interpreter works for the Court and is sworn to interpret for a party or a witness exactly what is said in Court.

The evidence you are to consider and on which you must base your decision is only the English-language interpretation provided through the official court interpreters. Although some of you may know the non-English language used, you must disregard any meaning of the non-English words that differs from the official interpretation.

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

INSTRUCTION NO. ____

You may hear testimony from witnesses who:

1. [Received favorable treatment or the promise of favorable treatment from the government in connection with this case.]
2. [Admitted being an accomplice to the crime charged. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime.]
3. [Have received immunity. Such testimony was given in exchange for a promise by the government that the witness's testimony will not be used in any case against the witness.]
4. [Pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability.]

For any of these reasons that apply, in evaluating a witness's testimony, you should consider the extent to which or whether the witness's testimony may have been influenced by any of these factors. In addition, you should examine the witness's testimony with greater caution than that of other witnesses.

INSTRUCTION NO. ____

You may hear testimony that a witness has been convicted of a felony or lied under oath on a prior occasion. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to the testimony of that witness.

INSTRUCTION NO. ____

Some witnesses, because of their education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. ____

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

INSTRUCTION NO. ____

The punishment provided by law for crimes is for the Judge to decide. You may not consider punishment in deciding whether the government has proved its case against any defendant beyond a reasonable doubt.

INSTRUCTION NO. ____

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

INSTRUCTION NO. ____

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.